



July 10, 2002

Mr. Brad Norton  
Assistant City Attorney  
City of Austin - Law Department  
P.O. Box 1088  
Austin, Texas 78767-8845

OR2002-3754

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165396.

The City of Austin (the "city") received a request for "a complete copy" of the "certification file" of Cuellar/Gifford Constructors, Inc. ("Cuellar/Gifford"), held by the city's Department of Small and Minority Business Resources in connection with Cuellar/Gifford's application for certification as a minority-owned business.<sup>1</sup> You assert that the requested information is excepted from disclosure under section 552.128 of the Government Code. The requestor has also submitted comments to this office. *See* Gov't Code § 552.304. We have considered the claimed exception and submitted comments, and we have reviewed the submitted information.

Section 552.128 of the Government Code states in pertinent part:

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<sup>1</sup>The request further states that the requested information "includes the documents" referred to by a city employee in a meeting with the requestor, which the city employee "relied on in making his decision to de-certify CG Constructor's, Inc." We also understand the request to encompass any documentation of "Mr. Jose Vera's representations that he was a majority stockholder in CG Constructor's Inc., formerly known as Vera, Gifford & Associates, Inc." The information submitted for our review is indicated to be the application file for Vera, Gifford & Associates, Inc. The file also contains information about other business entities. We assume that the entirety of the information in the file is both responsive to the request and constitutes the entirety of the information that the city seeks to withhold. Accordingly, this decision does not address any other information that may be responsive to the request.

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

Gov't Code § 552.128. The purpose of this exception is to protect the "personal" information individuals must submit to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business. *See* Debate on Tex. H.B. 625 on the Floor of the Senate, 75th Leg., R.S. (May 20, 1997) (transcript available from Senate Staff Services Office). We, therefore, conclude that the primary purpose of section 552.128 is to protect the privacy interests of individuals who must submit financial and other information regarding their businesses to governmental bodies.

The submitted documents contain information about various business entities. However, the personal information in these documents primarily pertains to a Mr. Jose Vera. We find that except for one page of these documents, which page we have marked, the documents consist entirely of information that was submitted to the city in connection with an application for certification as a historically underutilized or disadvantaged business. We have no indication that the city has been provided with the express written permission of the applicant, or an agent of the applicant, to release these documents. *See* Gov't Code § 552.128(b)(2). Accordingly, we conclude that all of the submitted information, except for the one page we have marked, is subject to section 552.128.

Because the primary purpose of section 552.128 is to protect individual privacy interests, the person whose privacy is at issue, or that person's authorized representative, has a special right of access to information that would otherwise be protected from disclosure by

section 552.128. *See* Gov't Code § 552.023. Here, the requestor essentially argues that he has such a special right of access.

The requestor states that his client is Cuellar/Gifford, a business entity that is also known as CG Constructor's Inc. This fact does not demonstrate, however, that the requestor is an authorized representative of Mr. Jose Vera, or of any other individual whose privacy is implicated in this instance. Accordingly, we conclude that except for the one page that we have marked for release and that the city must release, the city must withhold the submitted records in accordance with section 552.128.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

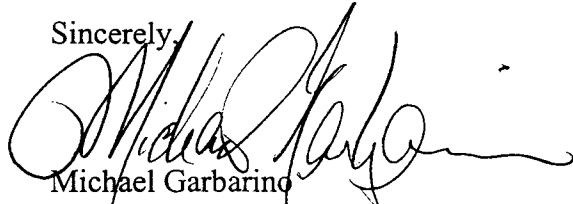
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 165396

Enc: Submitted documents

c: Mr. Thomas C. Washmon  
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(w/o enclosures)